IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL WRIT PETITION NO.1112 OF 1992

Archana Abhay Wani & ors. Petitioners

Vs.

The Deputy Collector & Competent
Authority (ULC), Nasik & ors. Respondents

Mr.R.A.Thorat for petitioners.
Mr.P.M.Patil, AGP for Resp.Nos.1 to 4.
Mr.P.N.Karlekar for Resp.No.5.

CORAM: B.H.MARLAPALLE & D.B.BHOSALE,JJ.

March 21, 2006.

ORAL JUDGMENT (PER B.H.MARLAPALLE,J.)

1. Chandrakant Trimbakrao Rajebahadur - Respondent No.5 in this petition filed under Article 226 of the Constitution held the following land in Nasik Urban Agglomeration :

Sr. No.	Survey/ CTS No.	Area Sq.M.	Class of land
1)	352/11	276-44	Vacant
2)	CTS 5233-A	117.00	Vacant
3)	787	4100.00	Vacant
4)	788	5400.00	Vacant
5)	CTS 58751-12	192.35	Vacant

6)	1587-C	240.80	Built-up
7)	352/1 to 18	573.58	Built-up
8)	532/1 to 16	468.23	Built-up
9)	CTS-1587-A	21.10	Built-up
10)	CTS 1587-F	10.90	Built-up
11)	5232	193.70	Built-up
12)	5233	69.70	Built-up
13)	5301	5.60	Built-up
14)	668/4 (CTS No.724)	2309.89	Green Belt
15)	5575-5-i	1425.11	Vacant

Total 15,404.40

==========

2. On the enforcement of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for short) with effect from 17th February 1976 the said respondent submitted his Returns under Section 6(1) of the said Act to the Competent Authority at Nashik who in turn by his order dated 13th December 1979 rejected some of the objections taken by the land owner through the draft communicated to him and the property at Survey No.668/4 (CTS No.724) was held to be not included / counted in the area of the land or the vacant land possessed / owned by the declarant. The owner agreed

to sell the plot located in City Survey No.724(1) to the present petitioners and, therefore, they jointly gave notice to the Competent Authority on 24/12/1979 as required under Section 26 of the Act. The Competent Authority acknowledged the said notice for the transfer of the property under Section 26 of the Act on 19/1/1980. When the Competent Authority passed the order on 13th December 1979 the said plot was shown as reserved (Green belt with car parking) in the Development Plan sanctioned by the State Government and subsequently on the basis of the Resolution passed by the Municipal Council the reservation for car parking came to be deleted and the plot was shown in the residential zone as per the G.R. dated 20/9/1980. The petitioners and the land owner registered the Sale Deed dated 23rd April 1981 and submitted the building plans to the Municipal Council on 7/5/1981 for construction of a building. A revised plan was submitted on 25th February 1982 and the Land Acquisition Officer gave no objection on 8th June 1982. On 29th January 1983 the Land Acquisition Officer issued a notification under Section 4(1) of the Land Acquisition Act, 1894 proposing to acquire the land for the purpose of garden notwithstanding the fact that by Resolution

dated 20/9/1980 issued through the Urban Development Department of the Government of Maharashtra while sanctioning the plan for Nashik Municipal Corporation the plot was removed from the car parking (green belt) zone and included in the residential zone. The State of Maharashtra sought to exercise the revisional powers and issued a notice on 7th May 1987 to the land holder under Section 34 of the Act. During the course of hearing it was pointed out that the subject plot was already sold to the present petitioners after it was excluded from the Green belt and the land holder also informed that he was not aware of any developments that might have been carried out by the petitioners. The Secretary in the Housing and Special Assistance Department by his order dated 4th June 1987 remanded the matter to the Competent Authority at Nashik for investigation and necessary action as per the provisions of law. He concluded his findings in the following words:

> "It is seen from the papers that the property at Survey No.668/4 (CTS No.724) was in the green belt when the order under Section 8(4) was issued by the Competent Authority on 13th December 1979. Hence the action of the

Competent Authority in excluding it from the holding of the landholder is correct. However, after revision of the Development Plan of Nasik in the year 1980, the Survey No.668/4 was included in the residential zone and as such it was necessary for the landholder to file fresh return under Section 6(1) as per provisions of Section 15 read with explanation (ii) below Section 6(1) of the Act. After inclusion of this land in the holding of the landholder, there would be an excess vacant land by 2309.89 sq.mtrs."

3. The Competent Authority i.e. the Deputy Collector, Urban Land Ceiling at Nashik on remand passed the fresh order on 9/2/1988 and held that the landholder was holding a total excess area of 12,107.52 sq.mtrs. So far as land in Survey No.668A/4 is concerned, the Deputy Collector observed as under:

"In view of the facts discussed above it is clear that the holder was holding the area of 2309.89 squ. mtrs. of the land bearing Survey No.668A/4 of Nashik as in excess on

> 20th November 1980 and the holder has transferred the said land on 23rd April 1981 without filling the statement under Section 15(1). However, if the holder would have filed the statement under Section 15(1) in respect of the said land the area of the said land would have to be declared as in excess land. Thus the sale of this land effected on 23rd April 1981 is hereby declared as null and void under Section 5(3) of the Act as the holder is holding the said land in excess."

This order came to be challenged in an Appeal before the Collector at Nasik and it was registered as ULC (Appeal) No.26 of 1988.

4. In the meanwhile the petitioners approached this Court in Writ Petition No.601 of 1987 seeking directions against the Nashik Municipal Corporation to approve the plans submitted by the petitioners and the said petition came to be allowed on 4th February 1988. The Nashik Municipal Corporation was directed to approve the plans submitted by the petitioners and pending with them within a period of two weeks. The said order passed by this Court was carried in SLP

before the Supreme Court and SLP Nos.4555 and 4556 of 1988 came to be disposed off by the Apex Court by holding that the directions given by this Court in Writ Petition No.601 of 1988 were non est and the appellate authority will not be bound or influenced in any manner by the said order while deciding the pending appeal on merits. The parties were directed to appear before the Appellate Authority i.e. the Divisional Commissioner. Consequently Appeal ULC No.26/1988 came to be dismissed by the Collector and the Appellate Authority on 30th March 1991 and the said order has been impugned in this petition by the appellants (purchasers).

5. Mr.Thorat, the learned counsel for the petitioners at the threshold submitted that the revisional powers under Section 34 of the Act could not be invoked at any time if such powers were not exercised within a reasonable period of about three years and it ought to be held that the State Government could not invoke such powers beyond a limit of three years. Reliance in this regard has been placed on a decision of this Court (DB) in the case of Automotive Research Association of India & anr. Vs. State of Maharashtra & ors. **[2003 (1)**

Mh.L.J. 604]. Next it is argued that there is an acquisition of about 473 sq.mtrs. area for the construction of roads by referring to the letter dated 21/4/1990. If this area of 473 sq.mtrs. is excluded from the area of 2309.89 sq.mtrs., as per Mr.Thorat the net area would come to less than 2000 sq.mtrs. which is the ceiling limit. In addition it is submitted that the revisional powers under Section 34 of the Act were invoked by the State and the revision was decided without notice to the petitioners though it was brought to the knowledge of the revisional authority by the landholder that the subject plot was sold to the petitioners. Mr.Thorat further submitted that the view taken by the lower Appellate Authority in passing the impugned order is not supported in law and, therefore, the petition is required to be allowed by setting aside the impugned order, more so when the lower Appellate Authority has not taken into consideration the changed status of the other land located in Survey Nos.787 and 788 totally admeasuring 9500 sq.mtrs., in as much as it was shown to be an agricultural land.

6. Undoubtedly this Court in the case of Automotive Research Association of India (Supra) has

held, inter alia, that the revisional powers under Section 34 of the Act should be invoked within a reasonable period of about three years. Ordinarily such powers cannot be exercised in cases where after valid determination of surplus declaration proceedings and after vesting of the land in the State and subsequent allotment thereof in accordance with law. In that case the revisional powers were invoked after 17 years of declaration and, therefore, this Court held that the powers exercised by the Minister under Section 34 were bad in law and the order passed was unsustainable. We have examined the facts of this case so as to assess whether there were no developments from the time the Competent Authority had passed his order under Section 8(4) on 13th December 1979 till the landholder was issued a notice on 7th May 1987 in the revision proceedings. The factual matrix of events noted by this Court in its judgment dated 4th February 1988 are a clear pointer to hold that it was not a dead case where the State Government sought to invoke the revisional powers under Section 34 of the Act. The petitioners purchased the land by registered sale deed on 23rd April 1981 and prior thereto they had issued a joint notice on 24th December 1979 to the Competent

Authority under Section 26(1) of the Act for permission to purchase the land. The petitioners had submitted the revised plans on 24th February 1982 and under Section 189 of the Maharashtra Municipalities Act, 1965 if the plan was not rejected within sixty days, there would be a deeming presumption that it was approved. The petitioners did not hear anything from the Municipal Council till 10th May 1982 on which date the Municipal Council addressed a letter to the petitioners directing them to obtain a no objection certificate from the Special Land Acquisition Officer. Accordingly the petitioners applied to SLAO on 8th June 1982 for a no objection certificate. On 20th October 1982 the SLAO approached the Municipal Council giving reference to the letter dated 16th November 1981 and intimated that the subject land could not be considered for acquisition as other alternative land was available for development of Municipal garden and this intimation was presumably under the advice of the Asst. Director of Town Planning, Nasik. The SLAO by his letter dated 21st December 1982 informed the petitioners that there was no proposal for acquisition of the land in question and on receipt thereof the petitioners approached vide their letter

dated 28th December 1982 to the Administrator of the Municipal Council. It was represented to the Administrator that on the basis of communication received from the SLAO subject land was not required for acquisition and, therefore, the development plans should be sanctioned. However, on 29th January 1983 a notification was issued under Section 4(1) of the Land Acquisition Act, 1894 proposing to acquire the subject land for the purpose of a garden. The Municipal Council was converted into a Corporation and on 27th April 1983 the Asst. Commissioner of the Corporation wrote to the petitioners that the Corporation was awaiting the remarks from the SLAO. On 28th April 1983 a notice was issued to the petitioners by the SLAO inviting their objections to the proposal of acquisition. As per the petitioners the said notice was served on them for the first time in March 1984 and they submitted their objections. An enquiry under Section 5-A of the Land Acquisition Act was conducted and a report was submitted to the Divisional Commissioner at Nashik. The Additional Commissioner by his order dated 8th October 1984 held that there was no need to acquire the subject land for the purpose of Municipal garden and that the Administrator of the Municipal Council had submitted

such a proposal without inspecting the site and the land was unsuitable for the proposal of a garden. He also proceeded to observe that the acquisition sought to be made was not bona fide. The petitioners, therefore, approached the Municipal Corporation but the Corporation on 24th January 1985 informed the petitioners that it had not heard anything from the SLAO. There was, therefore, correspondence going on between the parties and finally on 5th February 1985 the SLAO informed the petitioners that the acquisition proceedings were dropped. On 14th February 1985 the petitioners submitted an application to the Corporation with a request to process the development plan. The Corporation in the meanwhile had approached the Divisional Commissioner for review of the decision regarding dropping of the acquisition proceedings and the Divisional Commissioner by his order dated 25th June 1985 rejected the review application. The petitioners re-submitted their plans to the Municipal Corporation on 22nd July 1985 and they approached the Minister In-charge of the Urban Development on 26th August 1985 and finally gave a legal notice on 28th July 1986 to the Corporation. As a last resort Writ Petition No.601 of 1987 came to be filed before this

Court. It is thus clear that the proposal for the acquisition of the subject land for a garden to be developed by the Municipal Council / Corporation was alive till June 1985 when the Special Land Acquisition Officer intimated that it was dropped. The said decision was not accepted by the Corporation and it continued to persuade the Authorities concerned to acquire the land for development of the garden. The revision powers have been invoked after about eight years from the date the Competent Authority had passed his first order under Section 8(1) of the Act and held that the subject plot could not be considered in the holding of the land owner. In this obtaining circumstances we do not agree with the arguments advanced before us that there was inordinate delay for invoking the revisional powers under Section 34 of the Act and in the facts of this case the view taken in the case of Automotive Research Association of India (Supra) cannot be made applicable.

7. At this stage we must note that the order passed on remand by the Deputy Collector on 9/2/1988 and holding that the sale of the subject land effected on 23rd April 1981 was null and void under

Section 5(3) of the Act remained in-tact and the Appeal therefrom came to be dismissed by the impugned order. The remaining arguments advanced in support of this petition are no more res integra in view of the law laid down in the case of State of A.P. Vs. N. Adukesava Reddy **[AIR 2002 SC 5]** and to appreciate the case of the petitioners we need to reproduce some of the relevant provisions of the Act as under:

> "Section 2(h) - 'master plan', in relation to an area within an urban agglomeration or any part thereof, means the plan (by whatever name called) prepared under any law for the time being in force or in pursuance of an order made by the State Government for the development of such area or part thereof and providing for the stages by which such development shall be carried out.
>
> Section 2(o) - 'urban land' means, -
>
> (i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or

(ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat,

but does not include any such land whichi is mainly used for the purpose of agriculture.

Explanation- For the purpose of this clause and Cl.(q), -

(A) 'agriculture' includes horticulture, but does not include, -

(i) raising of grass,

(ii) dairy farming,

(iii) poultry farming,

(iv) breeding of live-stock, and

(v) such cultivation or the growing of such plant, as may be prescribed;

(B) land shall not be deemed to be used mainly for the purpose of agriculture, if such land is not entered in the revenue or land records before the appointed day as for the purpose of agriculture:

Provided that where on any land which is entered in the revenue or land records before the appointed day as for the purpose of agriculture, there is a building which is not in the nature of a farm-house then, so much of the extent of such land as is occupied by the building shall not be deemed to be used mainly for the purpose of agriculture:

Provided further that if any question arises whether any building is in the nature of a farm-house, such question shall be referred to the State Government and the decision of the State Government thereon shall be final;

(C) notwithstanding anything contained in

Cl.(B) of this explanation, land shall not be deemed to be mainly used for the purpose of agriculture if the land has been specified in the master plan for a purpose other than agriculture.

Section 2(q) - 'vacant land' means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include

(i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated;

(ii) in an area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day with the approval of the appropriate authority and the land appurtenant to such building; and

(iii) in an area where there are no building

regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building:

Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of live-stock, on any land situated in a village within an urban agglomeration (described as a village in the revenue records), then, so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purposes of this clause.

Section 3 - Persons not entitled to hold vacant land in excess of the ceiling limit. - Except as otherwise provided in this Act, on and from the commencement of this Act, no person shall be entitled to hold any vacant land in excess of the ceiling limit in the territories to which this Act applies under

sub Section (2) of Section 1.

Section 6 - Persons holding vacant land in excess of ceiling limit to file statement. - (1) Every person holding vacant land in excess of the ceiling limit at the commencement of this Act shall, within such period as may be prescribed, file a statement before the competent authority having jurisdiction specifying the location, extent, value and such other particulars as may be prescribed of all vacant lands and of any other land on which there is a building, whether or not with a dwelling unit therein, held by him (including the nature of his right, title or interest therein) and also specifying the vacant lands within the ceiling limit which he desires to retain:

Provided that in relation to any State to which this Act applies in the first instance, the provisions of this sub-section shall have effect as if for the words ‘Every person holding vacant land in excess of the ceiling

limit at the commencement of this Act', the words, figures and letters 'Every person who held vacant land in excess of the ceiling limit on or after the 17th day of February, 1975 and before the commencement of this Act and every person holding vacant land in excess of the ceiling limit at such commencement' had been substituted.

Explanation.- In this section, 'commencement of this Act' means, -

(i) the date on which this Act comes into force in any State;

(ii) where any land, not being vacant land, situated in a State in which this Act is in force has become vacant land by any reason whatsoever, the date on which such land becomes vacant land;

(iii) where any notification has been issued under Cl.(n) of Section 2 in respect of any area in a State in which this Act is in force, the date of publication of such notification.

8. Section 4 of the Act prescribes the ceiling limit whereas Section 6 mandates every holder of vacant land in excess of ceiling limit at the commencement of the Act to file a statement before the Competent Authority within the prescribed time. Section 7 deals with filing of statement in cases where vacant land held by a person is situated within the jurisdiction of two or more competent authorities. After filing of the statements and after such enquiry as laid down if there is any land in excess of the ceiling limit, such land would be acquired under Section 10 of the Act. Section 15, inter alia, provides that if on or after commencement of the Act, any person acquires by inheritance, settlement etc. any vacant land the extent of which together with the extent of the vacant land, if any, already held by him exceeds in the aggregate the ceiling limit, then he shall, within three months of the date of such acquisition, file a statement before the competent authority also specifying the vacant lands within the ceiling limits which he desires to retain. The Supreme Court in the case of Audikesava Reddy (Supra) concluded its findings in the following words:

"...It is evident from the aforesaid definition of master plan that it takes in view any plan prepared even subsequent to the coming into force of the Act. Further, the explanation to Section 6(1), as noticed above, very significantly provides that every person holding vacant land in excess of the ceiling limit at the commencement of the Act shall file a statement before the competent authority and "the commencement of the Act" under Clause (2) would be when the land becomes vacant for any reason whatsoever. Therefore, the date of commencement of the Act in a case where the land, which was not vacant earlier, would be the date on which such land becomes vacant land. It, thus, contemplates a situation of land, not being vacant, becoming vacant due to preparation of a master plan subsequent to 17th February, 1976. Further, the provisions of the Act require filing of a statement under Sections 6, 7, 15 and 16 from time to time as and when land acquires the character of a vacant land. Obligation to file statement under the Act arises when a

person comes to hold any vacant land in excess of the ceiling limit, which date necessarily may not be 17th February, 1976. It would all depend on the facts and circumstances of each case."

9. In the impugned order the lower Appellate Authority held that the view taken by the Deputy Collector and the Competent Authority that the landholder was required to file fresh statement under Section 6(1) and Section 15 of the Act was correct and if such statements were filed by the landholder from time to time and more particularly after change of the development plan / master plan for the Nashik Municipal Council / Corporation, it could have been possible for the competent authority to determine the surplus holding of Shri Chandrakant Trimbak Rajebahadur over and above the ceiling limits, if any, under the Act. This was not done by him at any time after 13th December 1979 and every time when the development plan was changed either at the instance of the Corporation or by the State Government and, therefore, the concurrent view taken by both the authorities below does not call for any interference in this petition. Unless the area covered by the

sale deed registered between the petitioners and the holder of the land is held to be not covered by the Act, the petitioners would not be able to claim their right over the subject land. It is the landholder who has to submit the returns afresh before the competent authority and subject it to the determination of excess land under the Act, every time the master plan amended and approved by the State Government was made applicable from a particular date and the status of the land held underwent modifications. The submissions that the returns were required to be filed under Section 6(1) only on 17/2/1976 and not at any time thereafter, cannot be accepted.

10. In the premises we dismiss the petition and leave the Respondent No.5 with the remedy to approach the Competent Authority and the Deputy Collector under the Land Ceiling Act to submit fresh return under Sections 6, 7 and 15 of the said Act. If such a return is submitted within a period of three months from today by the landholder, we direct the Competent Authority to decide the same on its own merits and by following the law laid down in the case of Audikesava Reddy (Supra) within a period of six months from the

receipt of the return. The rights of the petitioners shall be undoubtedly subject to such determination by the Competent Authority. The interim protection granted by this Court will continue to operate for a period of four weeks.

(D.B.BHOSALE,J.) (B.H.MARLAPALLE,J.)